

THE SUPREME JUDICIAL COURT OF THE STATE OF MAINE
SITTING AS THE LAW COURT

LAW COURT DOCKET NO. YOR-19-280

STATE OF MAINE,
Appellee

v.

Emanuel J. Sloboda
Appellant

On Appeal from
THE UNIFIED CRIMINAL DOCKET OF YORK COUNTY

BRIEF OF APPELLANT,
Emanuel J. Sloboda

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Statement of Facts and Procedural History

On or about June 3, 2019, the State charged Emanuel J. Sloboda, by Superseding Indictment just fourteen (14) days before trial, with violating conditions of his bail based on alleged contact with a Ms. [REDACTED].¹ (A. 25.) The alleged contact that was the basis for the State's charges in Counts 4 and 5 of the Superseding Indictment occurred entirely in New Hampshire. (A. 25.) By way of additional background, in November, 2018, Ms. [REDACTED] reported to a New Hampshire police agency that Mr. Sloboda forced her to travel with him from New Hampshire to Maine. (Tr. 54: 19-25.). As a result of that unfounded report, Mr. Sloboda was charged in Federal Court, District of Maine with Interstate Kidnapping. (Tr. 40: 8-21.). All federal criminal charges were dismissed within a month after the initial complaint. (Tr. 41.).

On November 18, 2019, the York County District Attorney's Office charged Mr. Sloboda, by Complaint, of two counts of Domestic Violence assault against Ms. [REDACTED] on or about alleged to have occurred on or about November 24th or 25th, 2018 and one count alleging Mr. Sloboda violating his conditions of released for purportedly having contact with Ms. [REDACTED] in Acton, Maine (A. 25-26.) An arrest warrant issued for Mr.

¹ Ms. [REDACTED] and Mr. Sloboda were in a longstanding romantic relationship. (Tr. 68-69.) In September, 2018, Mr. Sloboda was charged with Burglary, (Class B) and Criminal Trespass, (Class D) in the York County Unified Court as a result of a report of an alleged dispute over ownership of a dog between Mr. Sloboda, Ms. [REDACTED] and Ms. [REDACTED]'s mother and stepfather in Docket YRDCD-CR-2018-00826. (A. 30.) On or about September 4, 2018, , Mr. Sloboda posted \$200.00 cash bail and was ordered to have no contact with Ms. [REDACTED]'s mother and stepfather, and herself presumably because she was a potential witness, pursuant to the bail order issued the same date. (A. 30.) The Burglary and Criminal Theft charges were dismissed at jury selection on May 22, 2019 due to Insufficient Evidence. (A. 33.)

Sloboda which was executed by law enforcement on or about December 5, 2019 and held on \$2,000 cash bail awaiting trial. (A. 2.) An initial Indictment was filed on or about February 5, 2019 alleging three counts which reflected those original three charges. (A. 25.)

On or about June 3, 2019 a York County Grand Jury handed down a Superseding Indictment which included two additional charges enumerated as Counts 4 and 5. (A. 26.) Count 4 alleged Mr. Sloboda had unauthorized contact with Ms. [REDACTED] at the Market Basket Grocery Store in Rochester, New Hampshire. (A. 26.) Count 5 alleging contact at a Dunkin Donuts in Rochester New Hampshire. (A. 26-27.) On June 17, 2019, when he appeared, in custody, over six (6) months after Mr. Sloboda was first arrested, at what is referred to as “Jury Selection Triage” in the York County Unified Criminal Docket, the State dismissed Counts 1 and 2. (A. 5.)

On the morning of scheduled trial on June 20, 2019, Mr. Sloboda waived the jury trial on the remaining counts. (Tr. 4.) A bench trial before Justice Wayne R. Douglass was held in York County Superior Court on June 20, 2019. That morning, shortly before opening statements were set to begin, the State Dismissed Count 3, the only charge which alleged Mr. Sloboda had contact with Ms. [REDACTED] in Maine. (A.5.) The State elected to proceed on the two remaining Counts, 4 and 5, alleging that Mr. Sloboda had unauthorized contact with Ms. [REDACTED] in New Hampshire. (Tr. 4.)

At trial, the State introduced testimony of Robert Wentworth, Jr., a loss prevention supervisor of Demoulas Supermarkets. (Tr. 27.) Demoulas Supermarkets owns and operates the Rochester, New Hampshire Market Basket grocery store. (Tr. 27, 28.) Mr. Robert Wentworth, Jr. offered testimony as to operation of the Store's video surveillance system, specifically that he was familiar with the system, that it is a "single-system store" that is running all the time and the videos stored on-site in drives "inside the actual DVR". (Tr. 30.) Over Ms. Sloboda's objection, the Trial Court admitted the so-called Market Basket surveillance video into evidence as a business record. (Tr. 33- 34.)

State's witness York County Deputy Sheriff Kyle Kassa, was utilized to offer State's Exhibits 6 and 7, which are screen shots taken from the Market Basket video, showing the entrance and exit. (Tr. 46 : 5-19; 51:15-25.) Over Mr. Sloboda's objection, both still shot photographs were admitted into evidence. (Tr.43, 46.)

Neither Robert Wentworth Jr. Market Basket Loss Prevention Supervisor, nor Deputy Kassa had any firsthand knowledge of any interaction between the individuals depicted in the still shot. (Tr. 64:15-25). Deputy Kassa acknowledged that he could not determine if the two individuals depicted in the screenshots of the surveillance video were together or if they even knew each other based on the screenshots alone. (Tr. 57:13-25.) Deputy Kassa admitted that neither picture showed any "interaction' between the two individuals". (Tr. 58: 1-21).

Mr. Sloboda never assented to Maine having Jurisdiction to hear this matter. (Tr. 8, 80, 88) . At his arraignment on June 17, 2019, which was actually jury trial triage/selection, Mr. Sloboda objected to Jurisdiction in Counts 4 and 5. The Court entered the not guilty plea and noted the objection without acting or ruling. In his Motion for Judgment of Acquittal, counsel for Mr. Sloboda argued that the State of Maine lacked jurisdiction to hear this charge and convict Mr. Sloboda. (Tr. 88)

The Trial Court concluded that the State of Maine had jurisdiction. (Tr. 99) The Trial Court conceded that the basis for the State's charge is alleged contact that occurred in New Hampshire. (A. 12; I. Tr. 98.) Despite this, the Trial Court found that there was a "basis for jurisdiction is set forth in Title 17-A Section 7, subsection 1(a) which states:

"Except as otherwise provided a person may be convicted under the laws of this state for any crime committed by the person's own conduct of another for which the person is legally accountable only if, A, either the contact that is an element of the or the result that is such an element occurs within this state or has a territorial relationship to this state" (A. 12-13; Tr. 98-99.)

The Trial Court's analysis continued as follows:

The conduct in question is alleged contact. I think the State is able to prove alleged contact here. That contact would have occurred, as alleged, in New Hampshire. And so the conduct that's an element of the offense did not occur in Maine.

However, the result of that contact is an element as well. And that element has a territorial relationship to this state. The bail bond was issued in Maine by this court in connection with an underlying criminal charge in Maine. The defendant agreed to these conditions, executed the bail bond by signing it on September 4th, 2018, and that would have occurred in this court in Alfred, Maine. I find that to be a sufficient nexus or sufficient territorial relationship to this state and I think, therefore, there is jurisdiction under [17-A M.R.S.] Section 7(a)(1). (Tr. 99: 5-19.)

The Trial Court further found the evidence in this case was distinguishable from the facts presented in *State v. Collin* because “all the elements of the crime [in *Collin*] occurred in Canada, not Maine”. (Tr. 100:1-2.)

The Trial Court acquitted Mr. Sloboda of Count 5. (A. 18; Tr. 104.) The Trial Court found Mr. Sloboda guilty of Count 4. (Tr. 109: 9.) Specifically, the Trial Court found the following as it relates to contact between Mr. Sloboda and Ms. [REDACTED]:

“There is certainly no physical contact depicted in either image or in the video that the State played in Exhibit 5. However, I think the State has established by circumstantial evidence that there was contact. . . What clinches it for me is that we have two images and those images are at 11:28 approximately and 11:47, approximately 20 minutes apart. And those two individuals are still together. They walk in together. They walk out together. I think that’s a *strong basis* to conclude circumstantially that there was contact between [Mr. Sloboda] and Ms. [REDACTED]. (A. 19-20; Tr. 105-106.)(emphasis added).

Mr. Sloboda was sentenced to six (6) months in jail, credit for time served, as he had been unable to make bail since the original charges were brought in November, 2018. (A. 8.) Mr. Sloboda filed a timely notice of appeal on or about June 28, 2019. (A. 7.) On behalf of Mr. Sloboda, this brief is submitted.

ISSUES PRESENTED

- I. WHETHER THE TRIAL COURT HAD SUBJECT MATTER JURISDICTION TO CONVICT MR. SLOBODA BASED ENTIRELY ON CONDUCT THAT OCCURRED OUTSIDE THE STATE OF MAINE?
- II. WHETHER THE EVIDENCE WAS INSUFFICIENT TO SUSTAIN A GUILTY VERDICT ON A CHARGE OF VIOLATION OF CONDITION OF RELEASE BY CONTACT WITH A PERSON WITH WHOM CONTACT WAS PROHIBITED?

Standard of Review

Whether subject matter jurisdiction exists to authorize the State of Maine to convict an individual for conduct that undisputedly occurs in another jurisdiction is a question of law. *State v. Collin*, 1997 ME 6, ¶6, 687 A.2d 962. The statutory authority for deciding whether the courts of Maine may try a crime where some of the offence took place within another jurisdiction are set forth at 17-A M.R.S. §7. Whether a court has subject matter jurisdiction is a question of law that this Court reviews de novo. *State v. St. Onge*, 2011 ME 73, ¶13, 21 A.3d 1028.

When reviewing whether the evidence presented was sufficient to support a criminal conviction in a jury waived trial, this Court reviews all the evidence in the light most favorable to the State and all reasonable inferences from that evidence to determine whether the trier of fact could have found every element of the offense charged beyond a reasonable doubt. *State v. Noyes*, 2018 ME 113, ¶34, 191 A.3d 359. Factual findings of the trial court are reviewed for clear error. *State v. Kelly*, 644 A.2d 454, 456 (Me. 1994). A factual finding is clearly erroneous if there is no competent evidence in the record to support it. *State v. Navarro*, 621 A. 2d 408, 413 (Me. 1993).

Summary of the Argument

The Trial Court erroneously applied 17-A M.R.S. §7(1)(A) and erroneously distinguished *State v. Collin* when it found that Maine had jurisdiction to prosecute Mr. Sloboda for violation of a condition of release based on alleged conduct that occurred

entirely outside the boundaries of the State of Maine. It is undisputed that the evidence presented at trial only purports to show that Mr. Sloboda and Ms. [REDACTED] had contact in the State of New Hampshire. A bail order from the State of Maine does not establish a territorial relationship with the State of New Hampshire, or any other state. Every element alleged in the indictment in this case occurs in the State of New Hampshire. There exists no territorial relationship between any alleged crime committed in New Hampshire with the State of Maine.

The Trial Court's finding that the two still shots admitted over Mr. Sloboda's objection, circumstantially provides a "...strong basis..." (Tr. 106: 16) to conclude there was contact between Mr. Sloboda and Ms. [REDACTED] is wholly unsupported by evidence in the record, beyond a reasonable doubt. The only evidence of contact between Mr. Sloboda and Ms. [REDACTED] is two still shots from the Market Basket Supermarket, Rochester, New Hampshire, taken from a security video. The Trial Court's decision is unsupported by competent evidence in the records, to prove beyond a reasonable doubt, that Mr. Sloboda had unauthorized contact with Ms. [REDACTED].

ARGUMENT

I. THE TRIAL COURT LACKED SUBJECT MATTER JURISDICTION TO CONVICT MR. SLOBODA OF VIOLATION OF CONDITION OF RELEASE WHEN ALL THE ELEMENTS OF THE CRIME TOOK PLACE IN NEW HAMPSHIRE.

There is no dispute that Count 4 of the Indictment, the sole count Mr. Sloboda was convicted of after trial, was based exclusively upon alleged contact that occurred entirely outside the State of Maine. There was no evidence that Mr. Sloboda left Maine and went to New Hampshire with Ms. [REDACTED]. No evidence that they left the Rochester Market Basket and returned to Maine or any indication whatsoever that anything took place in Maine.

The sovereignty of the State of Maine extends to all places within its boundaries. 1 M.R.S §1. The penal laws of the State are enacted as an exercise of sovereignty and are thus restricted in their application to places within the boundaries of this State. *State v. Baldwin*, 305 A. 2d 555, 558 (Me. 1973). It is elementary law that the statutes of a state have no extra-territorial force, nor do its courts have any jurisdiction over offenses committed in other states or foreign countries. *State v. Stephens*, 107 A. 296, 297 (1919).

The sole basis for any potential subject matter jurisdiction in the State of Maine for a criminal charge where the event in question occurs entirely outside the

State is set forth in 17-A M.R.S. §7 (1975). There is little legislative history available for this statute; however the Comment provides insight:

This section sets out the rules for deciding whether the courts of Maine may try a crime where *some* of the offence took place, or was intended to take place, within another jurisdiction. Subsection 1, paragraph A provides the rule that will cover most cases. (Comment-1975) (Emphasis added).

In its ruling, the Trial Court pointed to 17-A M.R.S. §7 (1975). (*See Supra Statement of the Facts p. 4*) Specifically, the Trial Court found that the bail bond issued in Maine was a “sufficient nexus or sufficient territorial relationship” to this state there is jurisdiction under Section 7(a)(1). (Tr. 99: 17-19.)

The Trial Court addressed this Court’s decision in *State v. Collin*, when issuing the decision. (Tr. 99: 20-25; 100:1-4). However, the Trial Court ultimately deemed *State v. Collin* “...distinguishable and not controlling...”. (Tr.100 l: 5-6). That is simply not the case. On the contrary, in *Collin*, as in Mr. Sloboda’s case, the entire episode in questions occurred outside of the State of Maine.

More specifically, in *State v. Collin*, the Defendant observed a valuable scrap brass pump fixture that his employer had left adjacent to other scrap metal that was to be sent to Canada and sold. *Collin* at ¶ 2. The Employer of the Defendant did not authorize the removal of the brass pump. *Id.* Other employees surreptitiously loaded the brass pump under other scrap metal, which was then taken to Canada and sold. *Id.* In Canada, the Defendant rented a U-Haul, drove the pump to a scrap dealer, in

Canada, and sold the pump that did not belong to him, in Canada. This court vacated Mr. Collin's Theft conviction because no element of the crime had occurred in Maine. *Id.* at ¶11. In that decision, this court also confirmed the standard of review of a legal issue, which is de novo. *Id.* at ¶7.

In this case, the Trial Court erred when it found that the allegation against Mr. Sloboda in this case was distinguishable from the facts borne out in *State v. Collin*. In fact, the defendant in *Collin* had more contacts with Maine (the victim was from Maine, the property originated in Maine, the property was initially taken from Maine without permission) than the alleged conduct of Mr. Sloboda in this matter.

The Trial Court erroneously and without any legal authority or precedent concluded that the bail bond, issued in an unrelated Maine criminal case, created a territorial relationship between Maine and New Hampshire for Mr. Sloboda's alleged conduct. Contrary to the Trial Court's contention, *State v. Collin* instead compels a determination that Maine has no jurisdiction in this matter. There was no evidence offered to give any indication that outside of the bail order issued months prior to this alleged conduct, the State of Maine had anything to do with Mr. Sloboda's alleged conduct that occurred entirely in a public supermarket in New Hampshire.

The bail order merely establishes a status of Mr. Sloboda, it does not enhance Maine's jurisdiction to prosecute alleged criminal activity. Consider, for example, a similar order by which a driver's license is suspended pursuant to a Judgment of a

Maine Court. Under the Trial Court's rationale in this matter, The State of Maine could prosecute any of its citizens who have their right to operate a motor vehicle suspended and are found operating in another State. Likewise, any convicted felon who is a resident and was convicted of a felony in Maine could be found with a firearm in any of the other 49 States, and this Trial Court would sanction prosecution here as well under the theory that a Suspension order or Felony conviction originating in Maine creates a territorial relationship with our state. The bail requirement of "no new criminal conduct" could also give rise to prosecution in Maine against any citizen who is subject to a bail order and awaiting trial, if that person should be charged or convicted of a crime in any of the other 49 States. That would be an absurd result and contrary to the language and legislative intent of 17-A M.R.S. §7.

Any valid prosecution against Mr. Sloboda for having contact with Ms. [REDACTED] should have been brought in the State of New Hampshire, as argued at trial. (Tr. 89). The Maine citizen who is hypothetically under bail conditions in York County, who is charged with Operating Under the Influence in Oxford, County, is also charged with Violating a Condition of Release where the new charge occurred, not in the County where the bail condition originated. New Hampshire would give full faith and credit to Maine's bail order, and prosecute Mr. Sloboda for having contact in New Hampshire, if applicable.

17-A M.R.S. §7 exists to “...sets out the rules for deciding whether the courts of Maine may try a crime where some of the offense took place....in another jurisdiction...”. In this appeal, nothing took place in Maine. All alleged criminal conduct occurred in New Hampshire. The fact that there is absolutely no evidence whatsoever in this matter concerning conduct in Maine compels a finding that the Trial Courts decision was an error of law, contrary to the language and legislative intent of 17-A M.R.S. §7 and to this Court’s holding in *State v. Collin*.

The court lacked subject matter jurisdiction to convict Mr. Sloboda solely upon alleged contact that occurred entirely within the State of New Hampshire. As a result, the Mr. Sloboda’s conviction on the felony charge of Violating Conditions of Release (Class C) must be vacated and the matter remained for an entry of dismissal based on a lack of subject matter jurisdiction.

II. THE EVIDENCE WAS INSUFFICIENT TO SUPPORT BEYOND A REASONABLE DOUBT THAT MR. SLOBODA HAD CONTACT WITH THE PROHIBITED PERSON

The Trial Court convicted Mr. Sloboda based upon two still shot photographs of Mr. Sloboda and the prohibited person in a public supermarket, in New Hampshire. Even taking all the evidence in the light most favorable to the State, and drawing all inferences in favor of the State, (which is exactly how the Trial Court Ruled), there is not sufficient evidence to prove beyond a reasonable

doubt that Mr. Sloboda and the prohibited person had contact. The Trial Court reasoned:

What clinches it for me is that we have two images and those images are at 11:28 approximately and 11:47, approximately 20 minutes apart. And those two individuals are still together. They walk in together. They walk out together. I think that's a *strong basis* to conclude circumstantially that there was contact between the defendant and Ms. [REDACTED]. (Tr. 106: 12-18) (Emphasis added).

Any shoppers can coincidentally arrive at a store and leave a store at the same time. The Trial Court's conclusion that they "walk in together" and "walk out together" is not based on any fact in evidence and is pure speculation. The State offered no evidence whatsoever of what occurred at that New Hampshire grocery store that day or during the interim 20 minutes. Judicial Marshalls in the District Court constantly monitor litigants in protective cases; where the individuals are feet from each other, yet do not violate a no contact order. It was pure speculation for the Trial Court to conclude that there was prohibited contact based on these two photographs and without any additional information or evidence of any firsthand knowledge of the alleged contact. The State did not introduce a shred of evidence that there was any contact at all to prove a conviction beyond a reasonable doubt.

Maine Courts have struggled with a definition of 'contact'. In the context of contact in violation of a bail order, this Court stated in *State v. Pettengill*, 635 A.

2d 1309, 1310 (Me. 1994) that the word ‘contact’ is not a word of art, but one of common usage and commonly understood. It is unclear how the Trial Court chose to define contact and what about the alleged pictures gave rise to his finding that “contact” occurred, beyond a reasonable doubt. Two photographs extracted from a video which purport to show two people walk many feet apart, with absolutely no other corroborating testimony other than their identities, falls far short to prove intentional contact beyond a reasonable doubt.

The Trial Court all but acknowledged this when it made its oral findings. Specifically, instead of confirming that he was convinced, as the trier of fact, beyond a reasonable doubt, the Trial Court instead found the two photographs were “strong basis” to convict Mr. Sloboda. This finding by the Trial Court not only demonstrates a lack of evidence, but also constitutes a failure to meet the standard to find that Mr. Sloboda committed the alleged conduct, beyond a reasonable doubt. Each and every element of a crime must always be proven beyond a reasonable doubt. *State v. Villacci*, 2018 ME 80, ¶10, 187 A.3d 576. The Trial Court’s use of the standard of “strong basis” is not beyond a reasonable doubt and therefore is clearly erroneous.

CONCLUSION

For the foregoing reasons, the Trial Court's judgment of conviction of Mr. Sloboda on Count Four (4) alleging he violated conditions of release based on conduct that occurred entirely outside the State of Maine must be vacated and such further relief as this court deems necessary and proper.

Dated this ____ day of October, 2019.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I, Harry B. Center, II., Esquire, hereby certify that on this _____ day of October, 2019, I have caused two (2) copies of foregoing brief of the Defendant, Emanuel Sloboda, to be sent, via US mail, to:

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Harry B. Center, II., Esquire